IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1894 OF 2004

1. Canteen Stores Department)
Employee's Union, A Trade)
Union registered under the)
Trade Unions Act, 1926,)
having its registered)
office at Khandelwal)
Bhavan, 1st Floor, 166,)
Dr.Dadabhoi Naoroji Road,)
Mumbai-400 001.)

2. V.B.Mule,)
General Secretary,)
Residing at Sai Sagar)
Complex, "B" Wing,)
Room No.101, Sector 13,)
Palm Beach Road, Vashi,)
Sanpada, New Mumbai.)..PETITIONERS.

Versus

1. Chairman, Board of Administration)
and General Manager,)
Canteen Stores Department,)
having his office at 'Adelphi',)
119, Maharshi Karve Road,)
Mumbai-400 020.)

2. Union of India,)
through Joint Secretary,)
Ministry of Defence,)
Govt. of India,)
New Delhi-110 011.) ..RESPONDENTS.

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Mr.Shrikant Dange, Advocate for the Petitioners
Mr.Shetty, Advocate for the Respondents.

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CORAM : **F.I.REBELLO AND**

SMT.V.K.TAHILRAMANI,JJ.

DATE OF RESERVING
THE ORDER: JULY 27, 2006.

DATE OF PRONOUNCING
THE ORDER : AUGUST 02, 2006.

ORAL ORDER :(PER SMT.V.K.TAHILRAMANI,J.)

1. Through this Petition filed under Article 226 of the Constitution of India, the Petitioner Union is praying for a writ of mandamus or any other appropriate writ or order in the like manner against the Respondents directing them to refrain from acting or taking any action on the basis that the petitioner is not a recognised union.

2. The Petitioner No.1 is a Trade Union, registered under the Trade Unions Act, 1926 in the year 1952 and the petitioner No.2 is its General Secretary. The Petitioner union represented a majority of the employees employed in the Canteen Stores Department (CSD), which is an establishment attached with the Defence Department under the Ministry of Defence, Government of India. The Respondent No.1 is the Head of the Administrative Board of the Canteen Stores Department (C.S.D.)

looking after the entire Administration, Sales and Purchases of the goods sold in the shops in various parts of the country, particularly the forward areas. The petitioner Union claims that the CSD, is running commercial activities of selling goods to the Defence Service personnel, is an Industrial Establishment and it has three types of Establishments. The first category is the depot where the goods are collected to be supplied to other establishments. The second category is the establishment where various types of goods such as domestic Electrical Appliances, Wines, Cigarettes, Soaps, Cloth and several other provisional goods are sold to the defence personnel who are in service as well as those who have retired. The third category is the administrative establishment attached to the earlier two establishments. It engages various types of employees like Clerk, Attendants, helpers and so on. As per the Union the Board of Control, accorded Recognition to it by letter dated 23rd February, 1953. For about 50 years till the Joint Secretary in the Ministry of Defence, Government of India vide its letter dated 8.8.2003 informed

the Respondent No.1 that as per the records available in the Ministry, no union named as CSD Employees Union or the Workers' Association of CSD (India) has ever been given recognition in the past. It is further stated, that CSD did not seem to be an Industrial Establishment and hence the Rules for recognition of the Unions, issued by the Ministry of Defence were not applicable to them. The Petitioner Union is aggrieved by this communication and, therefore, prays for the reliefs as sought.

3. The Assistant General Manager (Legal & HRD), CSD, Ministry of Defence, has filed affidavit in reply on behalf of the Respondents. It is contended that the petitioner union is required to complete the formalities as set out in the Government notification dated 9.11.1993 issued by the Department of Personal & Training. The employees working in the Respondent No.1 are the Central Government employees governed by the Rules framed under Article 309 of the Constitution of India and they have protection under Article 311 of the Constitution of India. They being the

Government servants cannot be treated as employees of an industrial establishment, when their service conditions are governed by the CCS (CCA) Rules 1965 framed under Article 309 of the Constitution of India. It is further stated that CSD is not an industrial establishment and employees therein are not workmen within the meaning of Industrial Disputes Act, 1947. It is further stated that the CSD was functioning as a Government Undertaking upto 31st March, 1977 and on 1st April, 1997 the Government of India passed a resolution which was published in the Gazette of India on 16.4.1977 to the effect that CSD (India) ceased to exist and integrated with the Ministry of Defence. Thus, CCS (Conduct) Rules, CCS (CCA) Rules, 1965 and CCS (RSA) Rules 1993 are applicable to the CSD employees. Under these circumstances, the recognition granted by letter dated 23.2.1953 would no more be valid.

4. We have noted that O.M.No.2/10/80-JCA dated 9.11.2003 was circulated by the Ministry of Personnel & Training, Government of India and the Rules for Recognition of Service Associations have

been set out therein. Clause-10 of the said Rules states that if any question arises regarding interpretation of any of the provisions of these Rules or if there is any dispute relating to fulfilment of conditions for recognition it shall be referred to the Government, whose decision thereon shall be final. We have noted that the petitioner Union has been registered as a Trade Union under the Trade Unions Act, 1926 way back in 1953; and whether it should be treated as an Union for recognition or a Service Association under the 1993 Rules ought to be decided by the Government and more so when the impugned communication dated 8.8.2003 from the Joint Secretary to the Respondent No.1 only shows that as per the records available in the Ministry, no Union named as CSD Employees Union or the Workers Association or Canteen Stores Department (India) has ever been given recognition in the past and the CSD does not seem to be an Industrial Establishment. On these grounds, it has been stated that Recognition Rules for Unions issued by the Ministry of Defence are not applicable to the CSD employees.

5. We are satisfied that, the issue whether the Recognition Rules for the Unions are applicable or not, is required to be decided by the Government of India.

6. For the aforesaid reasons, Petition is disposed of by issuing following directions :

(i) Considering Clause 10 of the O.M. dated 9th November, 1993 the Respondents are directed to refer the dispute to the Government.

(ii) Before the Respondents refer the dispute to the Government, the petitioners are permitted to place on record their material to contend that they are an Industrial Establishment and are covered by Office Memorandum dated 4th March, 1997. The Respondents while forwarding the matter to the Government to decide the dispute, also to forward the representation made by the petitioner Union.

(iii) The Government thereafter to dispose of the dispute and if the petitioners desire to be heard then to give them hearing before deciding the dispute.

(iv) The present position to continue till the decision by the Government and for a further period of eight weeks from the communication of the decision by the Government to the petitioners.

(v) We have not decided the merits considering the order now passed and it will be open to the parties if still aggrieved to seek appropriate relief in law which they may be entitled to and then raise all contentions as now raised and other contentions which may become available.

(vi) Rule made partly absolute accordingly.

(vii) No order as to costs.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]